U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11198715

Date: JUN. 8, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an international tax advisor, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

> who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
>
> (B) Waiver of job offer –
>
> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).
[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility under the first prong of the *Dhanasar* analytical framework.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially provided a statement indicating:

> I intend to continue my career as an International Tax Advisor, helping multinational U.S. companies, especially those companies moving into the Brazilian market. As an International Tax Advisor with a tax law and tax consultancy background, I will help business to detect problems, provide solutions, and optimize business results by educating executives in leading positions about the complexities of doing business in Brazil and Latin America. I will be able to utilize my solid experience gained in over 20 years, having worked as a Tax Advisor in Brazil.
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> . . . .
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> My presence in the U.S. will provide support to businesses moving into the Brazilian market, assisting them to navigate the complex business environment and avoid unnecessary fines and fees arising out of non-compliance with the complex tax, business, and labor relations . . . . My career plan in the United States is to work for and serve as a consultant and advisor for multinational companies doing business or planning on doing business in Brazil and Latin America.
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> . . . .
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> Since 2010, I have worked at [redacted] in Brazil and the United States, holding the positions as Tax Executive Senior Manager and Senior Tax Manager Brazil Desk LATAM South.
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> . . . .
>
> [A]s an International Tax Advisor, I will be able to provide a wide array of services in the U.S., contributing directly to facilitate U.S. companies to generate substantial revenues

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

from the Brazilian market; while being fully compliant with the highly complex tax and business laws of the country.

In response to the Director's request for evidence (RFE), the Petitioner offered an updated statement indicating:

> I will consult U.S. and foreign companies and individuals on important issues relating to cross-border activities, such as 1) tax implications and tax treaties, 2) differing legal systems, 3) dispute resolution, 4) diplomacy, and 5) culture awareness.
>
> . . . .
>
> I intend to open a business in the U.S. to carry out consultations for my clients, which, by my goals and plans, should generate at least 2 more jobs. Conservatively, at least 8 to 10 more jobs will be needed, to fulfill my 3-4 year plan by working in the U.S.
>
> . . . .
>
> My plan is to work with U.S. companies that have a high volume of business with Brazil in order to contribute my Brazilian legal knowledge and my analytical and consulting skills to help their businesses avoid unnecessary risks, comply with Brazilian tax law and set to correct tone of dialogue with Brazilian authorities.

The Petitioner maintains on appeal:

> [A]s a well-rounded legal counsel and a tax law specialist who possesses an intimate knowledge of the business environment and complex legal landscape in Brazil, and who is uniquely well-positioned to guide companies that desire to engage in cross-border transactions and foreign investment-there is no doubt that [his] proposed endeavor to advise U.S. companies doing business or planning to do business in Brazil is not only meritorious, but nationally important, when considered how much benefit he can generate to the economy through his in depth expertise in the fields of business law, corporate law, tax law, and environmental law in Brazil.

The record includes documentation relating to United States and international tax laws, including Brazil; the complexities of tax laws and codes; the impact of tax reform on the accounting industry; the global outlook of tax policy; the effects of foreign direct investment on the U.S. economy; strategies for companies conducting international business; and implications of investment in Latin American and Brazilian companies. As such, the record shows that the Petitioner's proposed work as an international tax advisor has substantial merit.

On appeal, the Petitioner contends that: his "proposed endeavor is unquestionably of national importance, given the significant impact to the United States on international trade with Latin American countries, and particularly Brazil," "the legal industry plays an integral part in the U.S economy," "international real estate is moving into the mainstream," and "the trend toward greater cross-border movement of real estate capital-specifically in the U.S.-is as unmistakable as the growing

volume of world trade." In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner must demonstrate the national importance of his providing international tax law services rather than the national importance of the trade, legal, tax, and real estate fields or industries. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id*. We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id*. at 890.

In his appeal brief, the Petitioner emphasizes his "over 21 years of progressive experience in the field of tax law, handling a variety of complex business legal matters for multinational enterprises, and devising highly sophisticated solutions in such efforts." The Petitioner's experience, education, and training in his field relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id*. at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. As indicated above, the Petitioner initially proposed to provide consulting and advising services for multinational companies. In response to the Director's RFE, the Petitioner then claimed that he intended to open a business to carry out consultations with his clients. Although the Petitioner's statements reflect his intention to offer advising and consulting services in international tax law, he has not submitted sufficient, specific information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id*. at 893. Here, we find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his potential customers, either as a private contractor or as part of his business, to impact the tax field or U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake offers substantial positive economic effects for our nation or has significant potential to employ U.S. workers. He did not, for instance, show any credible business revenue projections to substantiate that his company's future business activity stands to provide substantial economic benefits to specific regions or the United States as contemplated by *Dhanasar*, *Id*. at 890.[4] In addition, although he claimed that his business would initially require two more jobs and then would require eight to ten more jobs in three to four years, the Petitioner has not offered evidence, for instance, that the unidentified area where his company would operate is economically depressed, that he would utilize a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. Nor has the Petitioner established that any increases in employment or investment attributable to his company's operations stand to

[4] The Petitioner's statement does not identify where his business would be located.

substantially affect economic activity or tax revenue in a state, region, or nationally. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.